IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

WP(C).No. 9989 of 2004(L)

CC.45 & 46/2003 of ENQ.COMMR. & SPL.JUDGE,TRIVANDRUM

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PETITIONER:

P.T.MATHAI,
DEEPTHI BHAVAN, MANTHUKA, KULANADA, PANDALAM.

BY ADV. SRI.V.G.ARUN
SRI.V.G.ARUN

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY GOVERNMENT PLEADER
SRI.D.KISHORE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/07/2007, ALONG WITH WPC.12912/04 AND CONNECTED CASES THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V. RAMKUMAR, J.

W.P.(C). Nos.9989, 12912, 21351, 27768 and 31804 OF 2004

Dated this the 12th day of July, 2007

J U D G M E N T

In these writ petitions filed under Article 227 of the Constitution of India, the common petitioner, namely, P.T.Mathai, seeks to declare that the proceedings before the Enquiry Commissioner and Special Judge, Thiruvananthapuram, pending against him are illegal and violative of the rights guaranteed to him under Article 20(2) of the Constitution of India and Section 300 of the Cr.P.C. In W.P.(C) No.9989/04 the declaration is sought in respect of C.C.Nos.43 and 45 of 2003. In W.P.(C) No.12912/04, the petitioner seeks to quash the proceedings in C.C.No.48/2003. This case was tried before the CJM, Pathanamthitta as C.C.No.150/2003 and ended in conviction for offences punishable under sections 406, 409 and 418 IPC on 11.11.2005. In W.P.(C) No.21351/04, the declaration is sought in respect of C.C.Nos.44 and 47 of 2003. In W.P.(C) No.27768/04, the declaration is sought in respect of C.C.No.46/2003 and in W.P.(C) No.31804/04, the declaration is sought in respect of C.C.Nos.44 and 47 of 2003.

2. The petitioner was the Secretary of the Kulanada Government Servants Co-operative Bank for a pretty long period of 26

years from 1971 to 1997. On 23.10.1997, on the complaint of the Joint Registrar of Co-operative Societies, Pathanamthitta, the Pandalam police registered Crime No.352/1997 for an offence punishable under section 409 read with section 34 IPC. This case, after filing of the final report, was taken on file by JFCM, Adoor, as C.C.No.727/1999, which has subsequently been transferred to CJM, Pathanamthitta, where it is pending as C.C.No.352/04. Likewise, the Pandalam police has registered similar cases in the other C.Cs as well. The following statement will show the dates on which the final report filed, offences alleged, the crime numbers and the proceedings before the respective courts including the Special Court:-

1. W.P.(C) No.9989/2004

Crime No.387/97 of Pandalam Police Station

Date of FIR	*7.11.1997*
Final report filed on	*30.11.1999*
Offences alleged under sections	*406, 418, 465, 467, 468, 471, 474, 477(A) read with section 34 IPC.*
Accused No.1	*P.T.Mathai*
Accused No.2	*Bhanudevan Nair*

Proceedings before the CJM Court, Pathanamthitta

C.C.147/03

C.C.146/03 - Trial being proceeded with.

VIGILANCE CASE

Crime No.VC 4 of 1998 Vigilance Police Station, Pathanamthitta

Date of FIR	*10.3.98*
Offences alleged	*13(2) r/w 13(1)(c)(d)of PC Act 420, 468, 471 and 409 IPC*
Final report filed on	*-05- 2003*
Accused	*P.T.Mathai*

Proceedings before the Vigilance Court challenged in the writ petition- C.C.43/03 and CC.45/03.

2. W.P.(C) No.12912/2004

Crime No.387/97 of Pandalam Police Station

Date of FIR	*27.11.97*
Final report filed on	*30.11.99*
Offences alleged	*406, 409 and 48 IPC*
Accused No.1	*P.T.Mathai*
Accused No.2	*Bhanudevan Nair*

Proceedings before the CJM Court, Pathanamthitta

C.C.150/03 - Trial over - accused convicted.

VIGILANCE CASE

Crime No.VC 4 of 1998 Vigilance Police Station, Pathanamthitta

Date of FIR	*10.3.98*
Date of final report	*5-2003*

Offences alleged	*13(2) r/w 13(1)(c) and (d) of the PC Act and sections 420, 468, 471 and 409 IPC*
Accused	*P.T.Mathai*

Proceedings before the Vigilance court challenged in the writ petition

C.C.48/03.

3. W.P.(C) No.21351/2004

Crime No.387/97 of the Pandalam Police Station

Date of FIR	*27.11.97*
Date of final report	*30.11.99*
Offences alleged	*Secs.406, 409, 418, 465, 467, 468, 471, 474, 477A r/w 34 IPC*
Accused No.1	*P.T.Mathai*
Accused No.2	*Bhanudevan Nair*

Proceedings before the CJM, Pathanamthitta

C.C.177/03

VIGILANCE CASE

Crime No.4/98 Vigilance Police station, Pathanamthitta

Date of FIR	*10.3.98*
Offences alleged	*13(2) r/w 13(1)(c) & (d) of PC Act 420, 468, 471 and 409 IPC*
Final report filed on	*5-2003*
Accused	*P.T.Mathai*

Proceedings before the Vigilance Court challenged in the writ petition

C.C.Nos.44 and 47 of 2003.

4. W.P.(C) No.27768/04

Crime No.352/97 of the Pandalam Police Station

Date of FIR	*23.10.97*
Final report filed on	*30.9.99*
Offences alleged	*Sec.409 r/w 34 IPC*
Accused No.1	*P.T.Mathai*
Accused No.2	*Bhanudevan Nair*

Proceedings before JFCM, Adoor

C.C.727/99 (Now C.C.352/04 of CJM, Pathanamthitta)

VIGILANCE CASE

Crime No.VC 4 of 1998 Vigilance Police Station, Pathanamthitta

Date of FIR	*10.3.98*
Offences alleged	*13(2) r/w 13(1)(c) & (d) of PC Act Secs.420, 468, 471 and 409 IPC*
Final report filed on	*5-2003*
Accused	*P.T.Mathai*

Proceedings before the Vigilance court challenged in the writ petition

C.C.46/03.

5. W.P.(C) No.31804/04

Crime No.387/97 of Pandalam Police Station

Date of FIR	*27.11.97*
Final report filed on	*30.12.99*

Offences alleged	*Secs.406, 409, 418, 465, 467, 468, 471, 474 & r/w 34 IPC*
Accused No.1	*P.T.Mathai*
Accused No.2	*Bhanudevan Nair*

Proceedings before CJM, Pathanamthitta

C.C.177/03.

VIGILANCE CASE

Crime No.4/98 Vigilance Police Station, Pathanamthitta

Date of FIR	*10.3.98*
Offences alleged	*13(2) r/w 13(1)(c) & (d) of PC Act Secs.420, 468, 471 and 409 IPC.*
Final report filed on	*5-2003*
Accused	*P.T.Mathai*

Proceedings before the Vigilance court challenged in the writ petition

C.C.44/03 and 47/03.

3. It is the case of the petitioner that he is being vexed twice before two different forums for the same or similar offences in respect of the very same fact situation and this according to him offends his constitutional and other rights under Article 20(2) of the Constitution of India and Section 300 Cr.P.C.

4. I heard Advocate Sri.V.G.Arun, learned counsel for the petitioner, Advocate Sri.D.Kishore, learned counsel appearing for the Bank and Sri.P.N.Sukumaran, learned Public Prosecutor.

5. Eventhough the basic allegation in all the cases is misappropriation by the petitioner in his capacity as the Secretary of the Kulanada Government Servants Co-operative Bank, in none of the cases pending before the Magistrate court is there any allegation of offences under the Prevention of Corruption Act, 1988. Even if the substratum for an offence punishable under section 13(2) of the P.C. Act, 1988, may be misappropriation, the related offences under IPC for which the petitioner faces trial before the Magistrate court are distinct and different offences. Moreover, except in the case of C.C.No.150/03 tried and disposed of by the CJM, Pathanamthitta, the petitioner has not been tried in the rest of the cases so as to attract the principle of double jeopardy enshrined in Article 20(2) of the Constitution or the principle of autre fois acquit and autre fois convict under section 300 Cr.P.C. Even with regard to C.C.No.150/03 referred to above, the petitioner has been convicted for offences punishable under sections 406, 409 and 418 IPC only which are not the offences involved in the corresponding C.C.No.48/03 pending before the Special court. Such being the position, the contention of the petitioner based on Article 20(2) of the Constitution of India and Section 300 Cr.P.C. is without any basis. Moreover, the matter is covered against the petitioner in the decision reported in ***State of Bihar Vs. Murad Ali Khan****[1988 (4) SCC 655].* Even if the act or omission alleged against the petitioner constitutes

offences under two or more enactments, there is no embargo against prosecuting him for those offences. But the only interdict is that he shall not be liable to be punished twice for the same offence in view of Section 26 of the General Clauses Act, 1897. Such being the position, I see no merit in the contention of the petitioner.

6. It is submitted by the learned counsel for the petitioner that consequent on the non-appearance of the petitioner before the Special court, non-bailable warrants are pending against him. It is open to the petitioner to surrender before the Special court and file applications for regular bail within two weeks from today and the said applications shall be considered and disposed of on merits, preferably on the same day on which such applications are filed. Until then, warrants, if any, pending against the petitioner shall not be executed.

These writ petitions are accordingly dismissed.

(V. RAMKUMAR, JUDGE)

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